

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000704-001 DT

02/12/2013

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT

J. Eaton

Deputy

KAREN OWENS

CHARLES E MAXWELL

v.

LISA NORRIS (001)

LISA NORRIS

14002 N 49TH AVE #1084

GLENDAL AZ 85306

DREAMY DRAW JUSTICE COURT

REMAND DESK-LCA-CCC

MINUTE ENTRY

Lower Court Case No. CC2012-144308.

Plaintiff-Appellee Karen Owens (Plaintiff) filed a procedural motion with this Court requesting that Defendant-Appellant's appeal be dismissed as abandoned because Defendant failed to (1) file a cost bond on appeal; (2) serve notice of the filing of the bond on Appellee; and (3) timely file a certified transcript of the proceedings which were 97 minutes long. For the reasons stated below, the court denies Plaintiff's procedural motion.

I. FACTUAL BACKGROUND.

On August 20, 2012, Defendant Lisa Norris filed a Notice of Appeal from an Injunction Against Harassment (IAH) issued by the Dreamy Draw Justice Court. The Notice of Appeal was filed on a Maricopa County Justice Court form and indicated—in relevant part—there was an appeal fee of \$51.00 plus a cost bond in the amount of \$250.00 as well as the need to pay for the preparation of a transcript of the record, if needed. The form further indicated the following:

I further acknowledge and understand that failure to complete all stages in the appeal process may result in the dismissal of the appeal and reinstatement of the trial court judgment.

Defendant signed this document.

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On November 13, 2012, Plaintiff filed a procedural motion—Procedural Motion-Refer to Superior Court (Motion To Dismiss/Motion For Declaration of Abandonment)—requesting that this Court dismiss Defendant’s appeal because Defendant allegedly failed to (1) file a necessary cost bond (2) notify Plaintiff it had filed the cost bond; (3) have a certified transcript prepared; and (4) provide Plaintiff with a copy of the certified transcript. Plaintiff asserted these defects were jurisdictional. Plaintiff also requested costs and attorneys’ fees. On the same day Plaintiff filed a Motion For Extension of Time To File Appellee’s Memorandum. On January 29, 2013, Defendant filed an untimely response to the Plaintiff’s Procedural Motion and alleged fees, cost bonds, written transcripts and superior court filing fees were not required because this was an IAH. On January 30, 2013, Plaintiff filed a Request for Summary Disposition of its Procedural Motion because Defendant failed to timely respond to its Procedural Motion. Plaintiff attached a Maricopa County Justice Courts Civil/Forcible/Special Detainer Appeal Packet to this Motion. The packet included the following note:

SPECIAL NOTE RE APPEALS of ORDERS OF PROTECTION and
INJUNCTIONS AGAINST HARASSMENT and WORKPLACE
HARASSMENT. [Sic.]

This Court does not assess fees with the appeal process. However, Superior Court will charge a filing fee for appeal of workplace harassment. Also, you will be responsible for making arrangements for payment of preparation of the transcript of the record of proceedings.

Additionally, unless otherwise ordered by the court, the protective or injunctive order will stay in effect pending the appeal.

Plaintiff filed an unauthorized Reply Memorandum rearguing the same points as were initially presented in Plaintiff’s procedural motion on February 6, 2013. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUE: DID DEFENDANT ABANDON HER APPEAL BY FAILING TO PAY THE COST BOND; NOTIFY PLAINTIFF OF THE COST BOND; PREPARE A TRANSCRIPT; AND PROVIDE PLAINTIFF WITH THE REQUISITE TRANSCRIPT.

Cost Bond

Plaintiff asserted Defendant’s failure to pay a cost bond on appeal is jurisdictional and argued this failure mandates a dismissal of Defendant’s appeal. Plaintiff is incorrect in that payment of the cost bond does not affect this Court’s jurisdiction. All of the rules associated with the filing of an appeal with the Superior Court are subject to being suspended if there is good cause with the single exception of the requirement of the timely filing of the notice of appeal. Rule 2, Superior Court Rules of Appellate Procedure—Civil (SCRAP—Civ.) states:

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Except as otherwise provided in these rules, and excepting the requirement of timely filing of the notice of appeal and cross-appeal, a trial or Superior Court may, for good cause shown, suspend the requirements or provisions of any of these rules in a particular case, and may order proceedings in accordance with its decision. These rules shall be liberally construed in the furtherance of justice.

SCRAP—Civ. rule 6(a)(3) specifically exempts cases involving Injunctions Against Harassment from the requirement of posting a supercedeas bond to stay orders. Rule 6(b)(1) provides litigants who file supercedeas bonds are exempted from filing cost bonds. A.R.S. § 12–1809(N) mandates that no fees be charged for filing an appeal in protective order cases.

The remedies provided in this section for enforcement of the orders of the court are in addition to any other civil and criminal remedies available. The municipal court and the justice court may hear and decide all matters arising pursuant to this section. After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney fees, if any. An order that is entered by a justice court or municipal court after a hearing pursuant to this section may be appealed to the superior court as provided in title 22, chapter 2, article 4, § 22–425, subsection B and the superior court rules of civil appellate procedure [sic] without regard to an amount in controversy. No fee may be charged to either party for filing an appeal.

Additionally, the Notice of Right to Appeal—Civil distributed by our Justice Courts informs litigants the court does not assess fees with the appeal process for appeals of Orders of Protection and Injunctions Against Harassment. This Notice excepts instances of workplace harassment from the “no fee” requirement. Because our statutory scheme as well as our rules preclude the court from charging fees to litigants in protective order cases, this Court finds Defendant is not precluded from proceeding with her appeal because of a perceived failure to pay a bond on appeal. Therefore, Plaintiff’s Motion to Dismiss is denied.

Transcript

Defendant is, however, required to provide this Court with a certified transcript of the proceedings. The Superior Court Local Rules—Maricopa County, Rule 9.4(b) mandates transcription of trial court records longer than 90 minutes. The rule states:

The verbatim record in limited jurisdiction courts may consist of audio, video, digital, transcription or other method of recording as approved by the Supreme Court. Verbatim records of less than 90 minutes in total length or duration need not be transcribed into a written format.

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If, as Plaintiff alleged, the trial court hearing was 97 minute in length, Defendant is required to provide a certified written transcript of the trial court hearing on the IAH if she wishes to proceed with this appeal. Defendant was notified of this requirement in the Maricopa County Justice Court's Notice of Right to Appeal—Civil. If Defendant is not able to afford the costs of the transcription, Defendant may seek a fee waiver or fee deferral from the Court.¹

III. CONCLUSION:

Plaintiff's Motion to Dismiss/Motion for Declaration of Abandonment is denied. Because Plaintiff did not prevail on her Motion, her request for costs and attorneys' fees is also denied. Plaintiff's Motion For Extension Of Time To File Appellee's Memorandum is granted. Defendant is responsible for providing a transcript of the hearing if the hearing was more than 90 minutes long.

Because time requirements were suspended during the pendency of this procedural motion pursuant to SCRAP—Civ. Rule 8(c)(3)—this Court makes the following orders:

IT IS THEREFORE ORDERED:

1. All future filings in this matter shall be filed with the Clerk of the Superior Court.
2. Pursuant to Rule 8(c)(4) of Superior Court Rules of Appellate Procedure—Civil the Dreamy Draw Justice Court is to transfer the record on appeal to this Court within 30 days from the filing of this minute entry.
3. The Appellant (Defendant) shall file Appellant's Memorandum (Opening Brief) no later than **60 days** from the filing of this minute entry.
4. The Appellee (Plaintiff) shall file Appellee's Memorandum (Answering Brief) no later than **30 days** from the filing of the Appellant's Memorandum (Opening Brief).
5. No Reply Memorandum shall be filed unless authorized by the Superior Court.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Myra Harris

THE HON. MYRA HARRIS

Judicial Officer of the Superior Court

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¹ Defendant may obtain the required forms from the Maricopa County Self Service Center or from the Maricopa County Self Service Center website at <http://www.superiorcourt.maricopa.gov/sscDocs/word/GNF1.doc>. A judicial officer will review and rule on any request.